have been made, without inconvenience to any party, subject to a stay until such time as the plaintiff's undertaking to make the Lahat Road premises available should have been carried out. Hence I have no hesitation in saying that the objections regarding the Lahat Road offer were entirely lacking in substance. Except for a single letter dated July 22, 1958 to the owners of 94, Brewster Road, inquiring as to the availability of such permises for rent, the defendant made not the faintest attempt to seek alternative accommodation. although had been given notice to quit since November 1957. The conduct of the defendant throughout had clearly been unreasonable and oppressive. The learned trial Judge has held, and I fully agree with him, that on the whole of the evidence greater hardship would fall on the plaintiff than on the defendant by refusing to make the order asked for. I would accordingly dismiss the appeal against the order for possession.

The appeal against the portion of the order relating to rent stands on a somewhat different footing. Counsels for both parties were apparently so preoccupied at the trial of the action with the major issue of possession that the comparatively trivial issue as to what was the maximum recoverable rent came to be overlooked altogether. The plaintiff's secretary, in examination-in-chief, deposed only to the normal rent of the Ipoh Motors portion. He was cross-examined entirely on matters which the defendant hoped to rely on to establish waiver. The defendant's managing director, however, stated at the opening of his evidence-in-chief, that the monthly rent was $550 and that he had continued to send the rent to the plaintiff after determination of the contractual tenancy. On the evidence the defendant failed to show that the contractual rent was in excess of the maximum recoverable rent. The order made by the learned trial Judge is therefore the only proper order he could have made, and I would also dismiss the appeal as to this portion of the order.

Finally, as to costs, the learned trial Judge merely stated in his judgment: "The plaintiff is entitled to its costs to be taxed by the Registrar." A rather unsual provision regarding costs has been made with regard to proceedings under the Ordinance by section 13, which reads as follows:

> "In any proceedings for the recovery of possession of any premises except on the grounds set out in paragraph (a) of sub-section (1) of section 12 of this Ordinance no costs shall be awarded to either party to the proceedings:
>
> Provided that if the Court is of opinion that either the landlord or the tenant has acted in an improper or unreasonable manner the Court may order that the landlord or the tenant, as the case may be, shall pay the whole or part of such costs as it may think fit."

Since these provisions constitute a departure from the general rule that costs follow the event, I am of opinion that when the Court exercises its discretion to condemn the unsuccessful party in costs it should be made clear in the judgment that such order is made in the exercise of discretion under the proviso to section 13, whether or not any reasons are given. It does not so appear in the judgment, and the discretion being that of the trial Judge, I do not think it would be proper to substitute our discretion for his, even if we are inclined to agree that the award of costs is justified. For my own part, I would set aside the order as to costs.

This is the appropriate place, I think to add that I have not overlooked the fresh evidence adduced on behalf of the defendant with the leave of the Court. Such fresh evidence was admitted largely because counsel for the plaintiff did not oppose the application and the Court relied on the affidavit of the defendant's solicitor assuring that such fresh evidence would have had a determining influence on the trial Judge had it been available. Having considered the whole of the evidence, however, I am of opinion that the defendant's case is so clearly devoid of merits that this evidence could have had no effect on the decision of the learned trial Judge. Moreover, a final order such as the one here, ought not in any case to be liable to be affected by the happening of subsequent events, and it was never suggested that the judgment had been obtained by fraud on the Court or other improper practice.

I would propose that the following order be made on this appeal: that, save as to the order for costs which is hereby set aside, the appeal be dismissed and the order of the High Court be affirmed except as to the date of delivery of possession by the defendant which shall be the 31st day of October, 1961 and the order of the High Court be amended accordingly. The appeal being unsuccessful except as to costs, I would order that the appellant pay to the respondent nine-tenths of the taxed costs of this appeal.

Appeal dismissed.

Solicitors: *N. Sharma; Gibb & Co.*

PUBLIC PROSECUTOR v. LOW AH SANG

[A. Cr. J. (Hashim J.) August 3, 1961]

[K.L. — Criminal Appeal No. 35 of 1961]

Criminal Law and Procedure — Prosecution — Offence under repealed law — Emergency Registration Area Regulations, 1948, reg. 18 — Emergency Regulations Ordinance, 1948 — National Registration Act, 1959, s. 24 — Emergency Regulations (Indemnity) Act, 1960, s. 11 — Constitution of the Federation of Malaya.

Criminal Procedure — Charge — Drafting.

A prosecution would now lie for an offence committed under the Emergency Regulations, 1948 when the Regulations were in force.

Observations on framing charges.

Cases referred to:—

(1) *Wicks* v. *Director of Public Prosecutions* [1947] A.C. 362.

(2) *Postlethwaite* v. *Katz* 59 T.L.R. 245.

(3) *Re T. S. Chockalingam* A.I.R. 1945 Madras 521.

(4) *The Public Prosecutor* v. *Bondada Ramalingeswaraswcmy* A.I.R. 1949 (Madras) 271.
(5) *Henshall* v. *Porter* (1922-3) 39 T.L.R. 409.
(6) *Public Prosecutor* v. *Syed Bakri* [1955] M.L.J. xvii.

CRIMINAL APPEAL.

H. S. Ong (Deputy Public Prosecutor) for the appellant.

Eugene Lye for the respondent.

Cur. Adv. Vult.

Hashim J.: The point for determination in this appeal is whether a charge can now be proferred for an offence under the Emergency Regulations, 1948.

The Emergency Ordinance, 1948 and subsidiary legislation by proclamation were repealed by L.N. 185 of 1960 with effect from 31st July, 1960.

The respondent was charged on 3rd February, 1961 for an offence under Emergency (Registration Areas) Regulations, 1948 alleged to have been committed by him on 14th June, 1960. He was arrested in Singapore on 2nd February, 1961 and charged in the Sessions Court, Kuala Lumpur on 3rd February, 1961. The case was heard on 10th May, 1961 and at that hearing defence counsel, Mr. Eugene Lye, raised an objection. He contended that as a result of L.N. 185 of 1960 the respondent could not be charged for an offence under a law which had been repealed. The learned President accepted this view and acquitted and discharged the respondent. The Public Prosecutor appealed against this order of the learned President.

Mr. H. S. Ong, the Deputy Public Prosecutor, argued the appeal on behalf of the Public Prosecutor and cited numerous authorities to support his contention that the respondent could be charged under the Emergency Regulations, 1948. I would only refer to two cases which, I think, are relevant in this appeal. They are *Wicks* v. *Director of Public Prosecutions* (1) and *Postlethwaite* v. *Katz* (2). Viscount Simon's judgment in *Wicks* v. *Director of Public Prosecutions* seems to make it quite clear that a prosecution for an offence under a repealed Act can be commenced and a conviction had even after repeal. The effect of repeal is set out in section 13 of the Interpretation and General Clauses Ordinance No. 7 of 1948. It keeps alive all obligations and the liabilities to penalties and the right to institute and carry on legal proceedings and enforce penalties. This section is identical in terms with section 38 of the English Interpretation Act, 1889 and section 6 of the Indian General Clauses Act of 1897. In *Postlethwaite* v. *Katz* it was held that a charge could be brought for an alleged offence against the order of 1939 committed while the order was in force although the proceedings were not begun until after the order had been revoked. In *Re T. S. Chockalingam* (3) it was held that the appellant, the editor of a vernacular daily paper "Dinasari", was rightly convicted though at the time of his prosecution there was no law in the statute book under which he had committed any offence in respect of the acts complained of. Kuppuswami Ayer J. in his judgment said, *inter alia*, "the question as to whether an offence was committed or not depends on the state of the law when the offence was committed and not on the law as it is on the date on which the prosecution is started." In *The Public Prosecutor* v. *Bondada Ramalingeswaraswamy* (4) it was ruled that the repeal of section 7 of the War Risks (Goods) Insurance Ordinance [IX (9) of 1940] did not take away the right which the Crown had to initiate prosecutions for an offence committed when section 7 had been in force.

Mr. Eugene Lye, for the respondent, relied on the phrase "unless the contrary intention appears" in section 13 of the Interpretation and General Clauses Ordinance, 1948. He argued that the wording of the proclamation ending the Emergency Regulations provided contrary intention which rendered section 13 inapplicable. He quoted the following from the proclamation: "We are satisfied in manner hereafter appearing that the need for the said Ordinance has ended ..... declare that the need for the said Ordinance has ended." He did not cite any authorities in support of this contention. I find I am unable to agree with this view.

I am of the opinion that no contrary intention appears in the proclamation ending the Emergency Regulations Ordinance, 1948. On the contrary it would appear that the Government intended to continue with the use of identity cards vide the National Registration Act, 1959. Section 24 of the National Registration Act, 1959 is substantially the reproduction of Regulations 18 of the Emergency (Registration Areas) Regulations, 1948. In *Henshall* v. *Porter* (5) it was ruled that the repeal of section 2 of the Gaming Act, 1835 by section 1 of the Gaming Act, 1922 did not prevent the bringing of proceedings under the repealed section after the date when the repealing section came into operation in respect of a cause of action which arose before that date. McCardie J., in his judgment, said: "In my opinion the Act of 1922 must be considered in the light of the settled, recognised and beneficient rule of law that existing rights are not to be deemed destroyed by a statute unless there be express words or the plainest implication to that effect. I need not cite the overwhelming body of authority as to this." The learned Judge went on to say: "I beg most respectfully to say that in my opinion it is important to maintain the rule of law that existing rights are not to be deemed destroyed unless an Act of Parliament is clear to that effect." The Emergency Regulations (Indemnity) Act No. 24 of 1960, which, as the preamble says, was meant "to provide for certain other matters arising out of the cesser of such Ordinance, (that is to say, the Emergency Regulations Ordinance, 1948) pursuant to the provisions of Article 163 of the Constitution" and which was

brought into force on 1st August, 1960, by section 11 saved all proceedings by or on behalf of the Government against any person in respect of any matter whatsoever. In my opinion, even if the Emergency Regulations had expired by effluxion of time, section 11 of Act No. 24 of 1960 would have preserved the rights of the Government to institute prosecutions and enforce penalties. For these reasons I hold that a prosecution would now lie for an offence committed under the Emergency Regulations, 1948 when the Regulations were in force.

I shall now deal with the charge and the order of the learned President. In my opinion the charge was very badly drafted. In this respect I would commend all Presidents of Sessions Courts and Magistrates to read and digest the observations of the learned Chief Justice. In his oral judgment in *Public Prosecutor* v. *Syed Bakri* (6) (Ipoh Criminal Revision No. 3 of 1955 — unreported) his Lordship said: "I have repeatedly emphasized that in framing charges prosecution officers should adhere as closely as possible to the wording of the statute constituting the offence which is charged and the Magistrates should be at pains to see that this is done. If it is done, the prosecution know what they have to prove and the accused person knows what is charged against him. If it is not done, then there is the danger of a muddle of the sort that has come to light in this case," as it has come to light in this appeal. The learned President acquitted and discharged the respondent after hearing the submission made by defence counsel and without recording any further evidence. In my opinion the learned President was wrong in making that order. Section 173(g) of the Criminal Procedure Code reads: "Nothing in paragraph (f) shall be deemed to prevent the Court from discharging the accused at any previous stage of the case if for reasons to be recorded by the Court it considers the charge to be groundless." Section 173(g) read in conjunction with section 173(f) would appear to mean that the Court cannot acquit and discharge an accused person unless and until the case for the prosecution is closed. The learned President should have only discharged the respondent.

The appeal is therefore allowed. The order of the learned President is reversed and the case be sent back to the Sessions Court, Kuala Lumpur for retrial.

Order accordingly.

Solicitors: *Eugene Lye & Hoh.*

LIM THONG ENG v. SUNGEI CHOH RUBBER CO. LTD.

[O.C.J. (Ong J.) August 28, 1961]

[K.L. — Civil Suit No. 408 of 1960]

Machinery — Machinery Enactment (Cap. 202), s.4 — Personal injuries — Breach of statutory duty under rule 30(i) and (vi) — Assessment of damages.

Practice and Procedure — R.S.C., 1957, O.19 rr.19 and 27.

The plaintiff claimed damages for personal injuries sustained whilst working in the defendant's rubber factory as a result of the defendant's negligence or breach of statutory duty under rule 30(i) and (vi) of the safety rules made under section 4 of the Machinery Enactment (Cap. 202).

Held: (1) the plaintiff was employed by an independent contractor and consequently there was between the plaintiff and the defendant no relationship of master and servant or employer and employee nor even a contract for services. The defendant thus owed the plaintiff no duty of care at common law and the claim for negligence fails;

(2) there was a breach of statutory duty by the defendant and that rule 30(vi) covers the plaintiff.

Cases referred to:—

(1) *Mitchell* v. *North British Rubber Co. Ltd.* [1945] S.C. (J) 69, 73.

(2) *Cavanagh* v. *Ulster Weaving Co. Ltd.* [1959] 3 W.L.R. 262, 273.

(3) *Lavender* v. *Diamints Ltd.* [1949] 1 K.B. 585.

(4) *John Summers & Sons Ltd.* v. *Frost* [1955] A.C. 740, 753.

(5) *Smith* v. *Cammell, Laird & Co. Ltd.* [1940] A.C. 242.

ACTION FOR DAMAGES.

P. G. Lim (Miss) for the plaintiff.

A. P. Godwin for the defendants.

Cur. Adv. Vult.

Ong J.: The plaintiff's claim is for damages for personal injuries sustained whilst at work in the defendant's rubber factory as a result of the defendant's negligence or breach of statutory duty, under rule 30(i) and (vi) of the safety rules made under section 4 of the Machinery Enactment (Cap. 202).

The date of the plaintiff's injury was March 27, 1959 but the regulations currently in force under the Machinery Ordinance, 1953, were not made and published until August 26, 1959, by L.N. 284, so that the former rules remain applicable in this case by virtue of section 38(e) of the Ordinance.

On March 27, 1959, the plaintiff, then a 32-year-old creping machine operator of some ten years' experience, was at work on the second of a battery of five machines in the defendant's factory. While so engaged his left hand was caught in the nip of the rolls and crushed,